



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

**1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733**

APR 30 2008

Ms. Mary Uhl
Bureau Chief
Air Quality Bureau
New Mexico Environment Department (NMED)
1301 Siler Road, Building B
Santa Fe, NM 87507

Dear Ms. Uhl:

We are writing this letter in support of the proposed revisions to the New Mexico Administrative Code, Title 20, Chapter 2, Part 7 regulation, dated March 25, 2008, concerning Excess Emissions. After review of the proposed rule, Region 6 would like to offer the following comments on the proposed revisions.

EPA Region 6 fully supports the proposed addition of 20.2.7.113 NMAC titled "Root Cause and Corrective Action Analysis." A root cause analysis, by definition, causes a company to identify the underlying reason(s) for an excess emission event providing the basis for preventing a similar event from occurring in the future. Since excess emissions are violations, a root cause analysis and corrective action plan should provide additional assurance to NMED and the public that a source is taking the necessary steps to improve performance. We have found that the root cause analysis provisions contained in the consent decrees of EPA's National Petroleum Refinery Initiative have been effective in reducing the amount of excess sulfur dioxide emissions at petroleum refineries.

In addition, we believe the addition of a root cause analysis section to the Excess Emissions rule will have the following added benefits: a) the root cause analysis will serve as a framework for the decision-making process associated with the review of excess emissions reports; b) NMED field personnel will know what information to ask or look for, and the owner or operator will know what information he/she is expected to make available when asserting an affirmative defense to a specific excess emissions scenario; c) the NMED can more efficiently tailor its resources to larger or more frequent excess emissions releases for better protection of air quality; d) having sector or location-specific action plans in place for certain pollutants (e.g., plans devised to minimize releases of ozone precursors often associated with the oil and gas operations in the Four Corners area) could assist the area from slipping into nonattainment for ozone, particularly with the recent Federal adoption of a more stringent ozone standard; and e) implementing such measures should bring in consistency and transparency to the review process associated with excess emissions reports.

With respect to the proposed addition of 20.2.7.14 NMAC titled "Determination and Requirements Regarding Emissions During Startup, Shutdown, and Maintenance," we applaud NMED's efforts to ensure that all emissions from a source are properly permitted, including routine emissions occurring during periods of startup, shutdown, and maintenance activities. The requirement for all sources to establish, maintain, and implement a plan to minimize emissions during startup, shutdown, and scheduled maintenance should be especially useful for reducing unnecessary emissions during these periods. The rule should require the plans to include emission limitations or other enforceable limitations on operations. We understand that the goal of NMED is to incorporate such plans into source permits in a manner that ensures that the plan requirements are enforceable both as a legal and practical matter. To that end, we would like to discuss with NMED how it intends to accomplish these goals as it implements the new rule.

From our discussions with your staff, we understand that a number of sources may need to apply for and obtain a different type of air permit due to emissions associated with startup, shutdown and maintenance; however, we are concerned that the proposed language of 20.2.7.14.B.1.b.iii. NMAC could be interpreted as providing an exemption from compliance for situations that would otherwise constitute a violation. EPA does not believe it can approve such a limitation on NMED's enforcement authority. We see two options for addressing this problem: (1) removal of this provision from the rule; or (2) rewording the provision to provide for an affirmative defense for the limited purpose and period of time contemplated by the original proposal. Alternative language, which may be considered acceptable, would include changing 20.2.7.14.B.3.b.iii to read:

"In any action brought by the department for excess emissions occurring during the pendency of the authorization, the owner or operator of such source may assert an affirmative defense to civil penalties for not having originally filed the correct notice or obtained the correct permit under 20.2.73 NMAC – Notices of Intent and Emissions Inventory Requirements, or 20.2.72 NMAC – Construction Permits, 20.2.70 NMAC – Operating Permits, 20.2.74 NMAC – Permits – Prevention of Significant Deterioration (PSD), or 20.2.79 NMAC – Permits – Nonattainment Areas, solely on the basis of excess emissions during startup, shutdown, and schedule maintenance. Nothing in this subsection shall be construed to affect the liability of a source for penalties or injunctive relief associated with excess emissions covered by 20.2.7.109 NMAC."

Should NMED decide to remove 20.2.7.14.B.3.b.iii. NMAC from the proposed rule, we offer our assistance to NMED as it creates policy or guidance related to the appropriate use of enforcement discretion.

Finally, we suggest the addition of the words "implemented or" into 20.2.7.113.A.2. NMAC of the proposed rule, so that the rule would read: "Analysis of the corrective actions *implemented or* available to reduce" Likewise, we would suggest

the substitution of the word "identified" for "required" in 20.2.7.113.A.2.f. NMAC of the proposed rule, so that the rule would read: "If one or more corrective actions are *identified*, a schedule" We feel these changes support the intent of the rule and strengthen it.

Thank you for the opportunity to provide comments on this proposed rule and we look forward to working with you to ensure its implementation is consistent with both state and federal law. Should you have any questions regarding this letter, please feel free to contact me at (214) 665-7242, or Mr. Alan Shar at (214) 665-6691.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Donaldson", written in a cursive style.

Guy Donaldson
Chief
Air Planning Section